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No. 86-267

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

RAVEN'S HOLLOW, LTD., AIRLIE FOUNDATION, AIRLIE TRUST AND MURDOCK HEAD,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Pursuant to Supreme Court Rule 22.6, Petitioners submit this supplemental brief to call to the Court's attention a crucial distinction between the instant case and this Court's recent decision in *United States v. John Doe, Inc. I*, No. 85-1613 (U.S. Apr. 21, 1987). Because of this distinction, *Doe* did not resolve the important questions presented in this case. To resolve these important questions, on which the circuit courts are divided, petitioners request that the Court grant certiorari in this case.

In *Doe*, this Court held that continued use of certain grand jury materials by government attorneys who had lawfully obtained access to the materials in the course

of a grand jury investigation did not constitute a disclosure within the meaning of Fed. R. Crim. P. 6(e) if the attorneys did not disclose the materials to others who had not previously reviewed them. The Rule, then, did not prevent the attorneys *themselves* from continuing to use the materials.

Unlike the *Doe* case, this case cannot be resolved on the ground that no future disclosures are contemplated. Here, it is quite clear that the grand jury materials will be revealed to additional personnel who have not previously reviewed them. *See* Petition For A Writ Of Certiorari at 5, 7 n.6.[1] And, the Court made it clear in *Doe* that when grand jury materials are revealed to a person who has not previously seen them, a disclosure governed by Fed. R. Crim. P. 6(e) occurs: "Rule 6(e) prohibits those with information about the workings of the grand jury from revealing such information to other persons who are not authorized to have access to it under the Rule." *United States v. John Doe, Inc. I*, No. 85-1613, Slip op. at 5. *See also United States v. Sells Engineering, Inc.*, 463 U.S. 418, 422-23 n.6 (1983); *In re Sells*, 719 F.2d 985 (9th Cir. 1983).

The question presented in this case is whether the disclosures contemplated by the government are permissible under Fed. R. Crim. P. 6(e) in light of this Court's decisions in *United States v. Sells Engineering, Inc.*, 463 U.S. 418 (1983), and *United States v. Baggot*, 463 U.S. 476 (1983). This issue was in no way addressed by the *Doe* case.

Petitioners submit that, for the reasons stated in our petition for a writ of certiorari, the decision of the Fourth Circuit to permit these future disclosures is in direct conflict with the decision of the Ninth Circuit in

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[1] Of course, as noted in our petition for a writ of certiorari, the materials will also continue to be utilized by persons who have already had some exposure to them.

In re Sells, 719 F.2d 985 (1983) and with prior decisions of this Court. To resolve this conflict the petition for a writ of certiorari should be granted.

Respectfully submitted,

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